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December 16, 1994

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BY HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20543

Re: Price Cap Performance Review for Local Exchange Carriers
CC Docket 94-1

Dear Secretary Caton:

Pursuant to Section 1.1206, the Computer & Communications Industry Association ("CCIA") submits two copies of written material provided to the Common Carrier Bureau in an ex parte presentation on December 15, 1994, relating to the above-captioned proceeding. The written material describes the substance of the oral presentation. Inasmuch as the oral presentation took place after the Secretary's office was closed, CCIA is filing this material on the day immediately following its oral presentation to the Common Carrier Bureau.

A copy of this letter and the enclosed material has also been sent to counsel to IDCMA.

Respectfully submitted,



Charles A. Zielinski
Counsel for Computer &
Communications Industry Association

Enclosures

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List A B C D E

CCIA ORAL PRESENTATION TO
FCC COMMON CARRIER BUREAU
CC DOCKET 94-1 -- DECEMBER 15, 1994

RECEIVED

I. CCIA'S PROPOSED VOLUNTARY PROGRAM FOR LECs

DEC 16 1994

- LECs subject to FCC price cap regulation would be allowed to volunteer: FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
 - to make arrangements with appropriate local officials to provide inside wire facilities for public school classrooms and public libraries in their service territories over a specified time period; and
 - the effectuation of such arrangements would be subject to FCC oversight, e.g., LEC submission of performance affidavits to the Commission.
- The productivity factor plus "consumer productivity dividend" ("CPD") would be established by the Commission -- e.g., 3 plus .5 -- but participating LECs would be exempted from the CPD for the period specified in which inside wire facilities are provided to public school classrooms and libraries.
- A volunteering LEC could seek a different form of incentive by waiver request, subject to Commission approval.
- After completion of the period specified for LEC assistance to public schools and libraries, e.g., all LECs would be subject to the same then prevailing productivity factor however calculated.

II. CCIA'S PROPOSAL IS DESIGNED TO SERVE THE PUBLIC INTEREST
IN "UNIVERSAL SERVICE" TO THE EDUCATION SECTOR OF THE ECONOMY

- Telecommunications links to the Nation's public school classrooms would enhance safety and efficiency, as well as improve education through wider use of telecommunications in learning; yet more than 85 percent of the Nation's public school classrooms, and a high percentage of public libraries, lack the inside wiring facilities necessary for inter-connection with telecommunications networks.
- This market segment has essentially dried up because school districts lack the funds to pay for inside wire facilities.
- In order to overcome this problem in the near term, an intensive effort by volunteering LECs would be required to develop creative arrangements with school districts and libraries for the provision of inside wire facilities; to incent LECs to make this effort, the FCC can apply a lower productivity factor in the price cap formula applied to volunteering LEC for the time period specified for the provision of inside wire facilities to schools and libraries.

III. CCIA'S PROPOSAL IS NOT AN UNLAWFUL SUBSIDY

- IDCMA's contention in its ex parte letter of September 2, 1994, that CCIA's proposal involves a subsidy, misses the mark because price cap regulation is not cost of service regulation, but rather is designed to produce incentives for LECs.
- The CCIA proposal will enhance the safety, efficiency and educational utility of schools and libraries to the public and will incent volunteering LECs to achieve those objectives.
- A benefit that would otherwise flow to interexchange carriers would be redirected to schools and libraries and ultimately to the users of those facilities and society as a whole.
- Because the benefit would be redirected to the underserved market segment of public schools and libraries, it would achieve a valid service expansion objective.
- Contrary to IDCMA's further contention in its ex parte letter (at p.5), the program and facility costs that would be incurred by an LEC would not be "unchecked" because each participating LEC's program would be subject to FCC oversight.
- CCIA's proposal is not an unlawful federal taxation scheme because the program is entirely voluntary -- no LEC would be compelled to participate -- and because it is designed to achieve a valid objective under a lawful price cap regulatory program. See Rural Telephone Coalition v. F.C.C., 838 F.2d 1307, 1314 (D.C. Cir. 1988).

IV. THE CCIA PROPOSAL IS NOT ANTICOMPETITIVE

- IDCMA is incorrect in its contentions (at pp.3-6 of its ex parte letter) that CCIA's proposal is anticompetitive.
- There has been "full and fair competition" for the provision of inside wiring facilities to public schools and libraries for some time now, but this market is still underserved.
- In these circumstances, regulatory incentives are warranted, particularly when the provision of telecommunications facilities to this market holds great potential for public benefit.
- CCIA has proposed relief from price cap regulation to incent LECs because that is the form of regulation to which they are subject; incentives to other FCC regulated possible providers of inside wire facilities, e.g., cable television companies, are beyond the scope of this proceeding.
- IDCMA's suggestion that public schools and libraries should be given direct subsidy payments, and then allowed to choose among inside wire providers, is useless, as IDCMA well knows, inasmuch as such appropriations are beyond the scope of the Commission's regulatory authority.

V. CONCLUSION

- The Commission should exercise its authority to regulate interstate commerce in telecommunications by adopting CCIA's plan, because it is the only proposal in this proceeding that is lawfully and reasonably designed to promote universal access to telecommunications in the underserved public education market, where wider access to telecommunications is critically important to the public interest, while preserving the objectives of price cap regulation.